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5 UNITED STATES DISTRICT COURT  
6 EASTERN DISTRICT OF WASHINGTON

7 LAMAR SHADEED WYNN,

8 Petitioner,

9 v.

10 STATE OF WASHINGTON, and  
11 JEFFERY A. UTTECHT,

12 Respondents.

NO: 2:19-CV-0192-TOR

ORDER DENYING CONSTRUED  
MOTION FOR RECONSIDERATION

13 BEFORE THE COURT is Petitioner's construed Motion for Reconsideration,  
14 ECF No. 7. This matter was submitted for consideration without oral argument. The  
15 Court has reviewed the record and is fully informed. For the reasons set forth below,  
16 the Motion for Reconsideration is **DENIED**.

17 By Order filed July 25, 2019, the Court summarily dismissed Mr. Wynn's *pro*  
18 *se* Petition for Writ of Habeas Corpus by a Person in State Custody pursuant to 28  
19 U.S.C. § 2254. ECF No. 5. Petitioner conceded that he did not fully exhaust his  
20 state court remedies before filing his petition. 28 U.S.C. § 2254(b); *Baldwin v.*

1 *Reese*, 541 U.S. 27 (2004); *O’Sullivan v. Boerckel*, 526 U.S. 838 (1999). Exhaustion  
2 is required.

3 The Court found Petitioner’s assertion that the failure to prosecute him by  
4 indictment, rather than by information, was legally frivolous. *See Gaines v. State of*  
5 *Washington*, 277 U.S. 81, 86 (1928) (“Prosecution by information instead of by  
6 indictment is provided for by the laws of Washington. This is not a violation of the  
7 Federal Constitution.”). In his construed Motion for Reconsideration, Petitioner  
8 disputes the holding of *Gaines* and contends that the State of Washington must have  
9 an “indictment by the Grand Jury” to justify the criminal legal process taken against  
10 him. ECF No. 7 at 6-14. Petitioner’s request is squarely foreclosed by *Gaines*.

11 A motion for reconsideration may be reviewed under either Federal Rule of  
12 Civil Procedure 59(e) (motion to alter or amend a judgment) or Rule 60(b) (relief  
13 from judgment). *Sch. Dist. No. 1J v. ACandS, Inc.*, 5 F.3d 1255, 1262 (9th Cir.  
14 1993). “A district court may properly reconsider its decision if it ‘(1) is presented  
15 with newly discovered evidence, (2) committed clear error or the initial decision was  
16 manifestly unjust, or (3) if there is an intervening change in controlling law.’” *Smith*  
17 *v. Clark Cnty. Sch. Dist.*, 727 F.3d 950, 955 (9th Cir. 2013) (quoting *School Dist.*  
18 *No. 1J*, 5 F.3d at 1263). “There may also be other, highly unusual, circumstances  
19 warranting reconsideration.” *School Dist. No. 1J*, 5 F.3d at 1263. These standards  
20 apply in habeas corpus proceedings under 28 U.S.C. § 2254 to the extent they are

1 not inconsistent with applicable federal statutory provisions and rules. *See Gonzalez*  
2 *v. Crosby*, 545 U.S. 524, 530 (2005).

3 In this instance, Petitioner has not presented newly discovered evidence. *See*  
4 *School Dist. No. II*, 5 F.3d at 1263. He has not shown that the Court committed  
5 clear error or that the dismissal Order was manifestly unjust. Furthermore, there has  
6 been no intervening change in controlling law and there are no other circumstances  
7 warranting reconsideration. *Id.*

8 **ACCORDINGLY, IT IS ORDERED:**

9 Petitioner's construed Motion for Reconsideration, ECF No. 7, is **DENIED**.  
10 The Clerk of Court is directed to enter this Order and provide a copy to Petitioner.  
11 **The file shall remain closed.** The Court certifies that pursuant to 28 U.S.C. §  
12 1915(a)(3), an appeal from this decision could not be taken in good faith, and there  
13 is no basis upon which to issue a certificate of appealability. 28 U.S.C. § 2253(c);  
14 Fed. R. App. P. 22(b). A certificate of appealability is therefore **DENIED**.

15 DATED August 30, 2019.



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A handwritten signature in blue ink that reads "Thomas O. Rice".

THOMAS O. RICE  
Chief United States District Judge